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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/961,106	09/21/2001	Francois G. Moore	064731.0256	5113

5073 7590 12/21/2005

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EXAMINER
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MEHRA, INDER P

ART UNIT	PAPER NUMBER
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2666

DATE MAILED: 12/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/961,106

Applicant(s)

MOORE ET AL.

Examiner

Inder P. Mehra

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 September 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,6-8,12-14 and 18-20 is/are rejected.
- 7) ☒ Claim(s) 3-5,9-11 and 15-17 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

1. This office action is in response to application dated 9/21/2001

#### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1, 7, 13, and 19-20, are rejected under 35 U.S.C. 102(e) as being anticipated by **Czerwiec et al** (US Patent No. 6,847,702), hereinafter ‘702.

For claims 1, 7, 13, and 19-20, ‘702 discloses in reference to figs. 2, 6, and 10, “a method for test head 160 testing of a connection in a synchronous optical network (SONET) element (refer to “Sonet 1 (OC3)” in fig. 1., col. 4 lines 45-55, comprising:

- dedicating an otherwise assignable output port of a SONET network element as a test access port, figs. 8 and 43 in fig. 9;
- receiving a request to connect a connection switched by a switch fabric of the SONET network element to the test access port, refer to col. 9 lines 28-32;
- determining whether the request is associated with a test head, refer to col. 9 lines 10-17; and

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- if the request is associated with the test head, provisioning the switch fabric to connect the connection to the test access port, refer to col. 9 lines .

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 2, 8 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over ‘702, as above, in view of Tyree (US Patent Application Publication No. 2002/0120853) .

For claims 2, 8 and 14, ‘702 discloses all the limitations of subject matter with the exception of the following limitations, which have been disclosed by Tyree, as follows:

- if the request is not associated with the test head, denying the request, refer to paragraph 0032..

It would have been obvious to the person of ordinary skill in the art at the time the invention to use the capability of “if the request is not associated with the test head, denying the request” as taught by. The capability can be implemented by connecting Test head to switch fabric manager. The motivation for using this capability is to distinguish between valid and invalid users.

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6. Claims 6, 12 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over '702, as above, in view of **Wickham** (US Patent No. 6,370,154) .

For claims 6, 12 and 18, '702 discloses all the limitations of subject matter with the exception of the following limitations, which have been disclosed by Wickham, as follows:

- wherein the request is a TL-I command, refer to col. 7 lines 52-67.

It would have been obvious to the person of ordinary skill in the art at the time the invention to use the capability of "wherein the request is a TL-I command" as taught by.

The capability can be implemented by connecting Test head to switch fabric manager.

The motivation for using this capability is to distinguish between valid and invalid users.

#### ***Allowable Subject Matter***

7. Claims 3-5, 9-11, and 15-17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Response to Arguments***

8. Applicant's arguments filed 9/28/05 have been fully considered but they are not persuasive.

Applicants respectfully submit that Claim 1 (as well as Claims 7, 13, and 19-20) is allowable because Czerwie does not disclose each and every one of these limitations. For example, Czerwie does not disclose dedicating an otherwise assignable output port of a SONET network element as a test access port. The Examiner argues that this limitation is taught in Figs 8 and 9 of Czerwie. **However, these figures, along with the rest of Czerwie,**

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**discloses testing of a DSL system and connection - not a SONET connection as required by the claims. Therefore, Czerwie does not teach dedicating an output port of a SONET network as a test access port. Although** Figure 2 of Czerwie discloses a network termination card (37) having a SONET port (21), this SONET port is not related to the testing function of Czerwie. The testing is performed using the test head and the test access card. In any case, the SONET port of the network termination card is certainly not dedicated as a test access port.

In response, it is stated that **Czerwiec discloses**, The exemplary system 1 ADSL (Asymmetric Digital Subscriber Line) **and is optimized for SONET (Synchronous Optical Network) OC3 technologies and standards**. Those skilled in the art will understand that the basic architecture of system 1 is applicable to many other technologies and standards”.

Further, Network Termination (NT) card 37 includes a SONET OC3 port 21.

Applicant argues, “there is no disclosure in Czerwie of determining whether a request to connect a connection to the test access port is associated with a test head and deciding whether to provision a switch fabric based on the determination”.

In response, it is stated that **Czerwiec discloses explicitly**, “ tests possibly run from test head 160 are MLT type test sequences, ---- the test head, being constantly monitored by a resident ATU-R, while switched to the test access port when needed to verify or diagnose subscriber faults.”, refer to col. 9 lines 10-17. Further, **Czerwiec discloses explicitly** “Upon requesting a test scenario requiring this golden ATU-C, the ATU-C would be disconnected from the ATU-R and connected to the test access bus”, refer to col. 9 lines 28-32.

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If only spare line switching is required, a spare line switching card (switching fabric) and spare LT is preferred for each shelf requiring spare line switching. If both spare line switching and test access are required, both the spare line switching/spare LT cards and the test access card would be preferred on each shelf requiring these functions.

**In light of above explanations, the arguments by applicant are not persuasive.**

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

### ***Conclusion***


10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Inder P. Mehra whose telephone number is 571-272-3170. The examiner can normally be reached on Monday through Friday from 8AM to 5PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Seema Rao can be reached on 571-272-3174. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Inder P Mehra  
Examiner  
Art Unit 2666

  
DANIEL  
PRIMACY EXAMINER